

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL H. LITZ et al.

Defendants.

Case No.: 4:16-cr-157-AGF DDN

SECOND MOTION TO EXTEND DATE FOR COMMENCEMENT OF SENTENCE

COMES NOW, Defendant Michael H. Litz ("Litz") by and through his undersigned counsel and for his Second Motion to Extend Date for Commencement of Sentence pursuant to 18 U.S.C. § 3141(b) and states to the Court as follows:

1) Litz was originally indicted on two counts, involving conspiracy to commit bank fraud and misapplication of bank funds, on April 13, 2016.

2) The government filed its superseding indictment on January 31, 2017, alleging eight (8) separate counts, including misapplication of bank funds and conspiracy to commit bank fraud.

3) The government and Litz entered into a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C) and Litz entered his plea of guilty to Count 3 of the superseding indictment (conspiracy to misapply bank funds) pursuant to that agreement on January 16, 2018.

70210

4) The government and Litz submitted their pre-sentence memoranda on April 19, 2018, and Litz was sentenced by this Court on May 14, 2018, to 36 months imprisonment pursuant to the plea agreement.

5) Litz filed his Notice of Appeal on May 23, 2018, which appeal is still pending.

6) Litz subsequently hired new counsel to pursue his post-trial remedies, including his appellate and habeas corpus remedies under 28 U.S.C. § 2255 after his trial counsel indicated that they were no longer going to represent him in this matter.

7) Litz filed his First Motion to Extend Date For Commencement Of Sentence on July 2, 2018, after retaining new counsel, and provided counsel with the documents relevant to his motions.

8) Litz's counsel timely contacted the court reporter for this Court to order the transcript of his plea in this matter, but was informed that the court reporter is on vacation and will not return until July 17, 2018.

9) Litz is scheduled to report to USP Marion, in Marion, Illinois on July 17, 2018, pursuant to this Court's prior Order.

10) Litz has pursued the preparation and filing of his post-trial motions diligently and without delay, however, the transcript of his plea is a necessary component to his motions. The unavailability of the court reporter was unforeseeable, and this motion is not filed for purposes of delay, but rather to permit Litz's counsel to complete the post-trial motion filings.

11) As the court reporter will be back this week, Litz does not anticipate any basis for future delay. Litz expects that the motion preparation can be completed within five business days of his receipt of the plea transcript.

12) Litz is therefore seeking an additional 10-day stay of the execution of his sentence pending the resolution of the legal issue.

Points and Authorities

18 U.S.C. § 3141(b) provides that a trial judge shall decide whether to detain or release a defendant pending execution of sentence. The Court already exercised its discretion under this section to allow Mr. Litz to remain on release between his guilty plea and his sentencing. The defendant requests that this stay be extended an additional month.

18 U.S.C. § 3143(a)(1) guides the Court's exercise of discretion when deciding whether to stay the execution of the defendant's sentence pending designation to a federal prison. The statute directs the Court to order detention unless "the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released" At the time of sentencing, the Court found by clear and convincing evidence that the defendant did not pose any such risks. That decision was based on numerous factors, including that the defendant is 63 years old, has a close-knit family and a young son, has aging parents and close ties to the community, has been free on bond through the present time and has appeared at every proceeding required of him, voluntarily surrendered his passport and has complied with all of the requirements of pre-trial services and the Court.

70210

In addition, Mr. Litz has not engaged in any activities related to the conduct for which he was indicted, and has continued to reside in the community where he lived prior to his indictment, demonstrating a lack of risk to the community.

Those factors continue to support the conclusion that there is clear and convincing evidence that Mr. Litz will continue to cooperate with the judicial process by appearing where and when ordered to do so by the Court and that he poses no risk to the community or any individuals within it.

WHEREFORE, the defendant respectfully prays that his surrender date be stayed until July 30, 2018.

Respectfully Submitted,

/s/ Thomas R. Carnes

Thomas R. Carnes, MO 41570
9666 Olive Blvd., Ste. 211
St. Louis, Missouri 63132
Telephone (314) 942-6571
Facsimile (314) 942-6570
E-Mail: tcarnes@attystl.com
Attorneys for Defendant
Michael G. Litz

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the United States District Court for the Eastern District of Missouri, this 17th day of July, 2018, with notice sent electronically to all counsel of record.

/s/ Thomas R. Carnes, MO 41570